

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Children’s Television Programming Rules	)	MB Docket No. 18-202
	)	
Modernization of Media Regulation Initiative	)	MB Docket No. 17-105
	)	
	)	

**REPLY COMMENTS OF HEARST TELEVISION INC.**

Hearst Television Inc. (“Hearst”)<sup>1</sup> files these reply comments to urge the Commission to adopt certain—but not all—of the changes to the children’s educational and informational (“E/I”) programming rules as proposed in the *Notice of Proposed Rulemaking*<sup>2</sup>—with a goal of adjusting the current regime to facilitate greater flexibility for broadcasters while continuing to advance the child-centric public interest obligations embodied by the Children’s Television Act (“CTA”).<sup>3</sup>

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<sup>1</sup> Hearst is an industry leader in innovation that owns and operates 34 full-power television stations, including one that operates as a satellite station. Hearst’s stations provide highly localized, award-winning service to approximately 21 million U.S. television households.

<sup>2</sup> *Children’s Television Programming Rules, Modernization of Media Regulation Initiative*, Notice of Proposed Rulemaking, MB Docket Nos. 18-202, 17-105, FCC 18-93 (rel. July 13, 2018) (“*Notice*”).

<sup>3</sup> Children’s Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996-1000, codified at 47 U.S.C. §§ 303a, 303b, 394. The CTA instructs the Commission to determine whether a broadcaster seeking renewal of its license “has served the educational and informational needs of children through the licensee’s overall programming, including programming specifically designed to serve such needs.” 47 U.S.C. § 303b(a)(2).

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## Summary

In this proceeding, the Commission has the opportunity to create both more flexibility and more certainty in the children’s E/I programming rule by modernizing certain aspects of the rule while clarifying others. Significant changes in the way children viewers consume video programming support some of the changes proposed in the *Notice*, but marketplace developments do not warrant wholesale revision of the current E/I programming rule. Specifically, the proliferation of sources of children’s *entertainment* programming in the marketplace—including cable networks and Internet offerings—are an inappropriate substitute for the sort of age-appropriate, specifically-designed E/I programming broadcast by television stations for children viewers under 17 mandated by the Children’s Television Act.

There is much of value in the current rule. The existing rule’s Category A / Category B approach affords broadcasters two options for satisfying their E/I programming obligations. The first of those options—centered on the Commission’s “Core Programming” rule—provides certainty; the second, by its terms, affords precisely the sort flexibility touted by the *Notice* and endorsed by commenters, including the flexibility to count PSAs, specials, and short-form and non-regularly-scheduled programming toward the processing guideline. Because the E/I programming rule already contains a significant measure of flexibility, drastic changes are unnecessary. (And because the Children’s Television Act requires television broadcasters to serve the educational and informational needs of children under 17, significant revisions to the rule are unwarranted.) What broadcasters need, instead, is guidance and clarification regarding the Category B processing guideline—particularly in light of the 2016 *WFRB* decision, which called into question the viability of Category B as a compliance strategy.

There is, likewise, no reason to jettison the requirement that Core E/I Programming be aired on stations' primary (rather than multicast) streams. Although Hearst agrees that the Commission should eliminate the requirement that each multicast channel separately satisfy the E/I programming rule, allowing licensees to move *all* E/I programming onto multicast streams would disserve the purposes of the CTA. Although primary and multicast channels serve the same audiences over-the-air, MVPD carriage of multicast channels lags behind that of primary channels. Primary streams, then, reach the largest audience. Allowing broadcasters to move all E/I programming to lesser-watched multicast streams would mean lower-quality (i.e., standard definition, not closed-captioned or video-described) programming and significantly fewer viewers—which in turn would mean less sponsorship and/or advertising revenues, and ultimately less E/I programming. The provision of accessible—video described and closed captioned—age-appropriate, E/I content to the children viewers that need it most would also be (inadvertently) undermined. These results would be precisely contrary to the aim of the CTA to ensure the continued availability of high-quality children's educational and informational programming in local television markets across the country.

Certain updates to the existing rule nevertheless are warranted. Hearst urges the Commission to breathe new life into the existing license renewal standards by taking several steps to increase the flexibility of the current rule in a reasonable and measured way:

- The Commission should change the definition of Core Programming by expanding the time period in which children's E/I programming may be aired, from the existing from the existing 7 a.m.-10 p.m. window to a wider and more flexible 6 a.m.-11 p.m. window.

- The Commission should replace the current “second home” preemption/rescheduling *policy* with a *rule* that gives stations the flexibility to reschedule preempted children’s Core Programming to any time between 6 a.m. and 11 p.m., provided that viewers are given reasonable notice of the rescheduled date and time (and should clarify that notice provided on station websites is sufficient).
- The Commission should adopt a reliable, predictable Category A renewal processing standard of (i) three hours per week (on the one hand) *or* (ii) 35 hours of Core Programming each quarter *and* 182 hours annually (on the other hand) for each commercial station’s primary channel, a standard that would maintain the Commission’s, and broadcasters’, existing commitment to making E/I programming available to children viewers while giving local stations an additional measure of flexibility to schedule programming of interest to their local communities.

In addition, Hearst encourages the Commission to re-think the current recordkeeping and reporting requirements. In place of the current burdensome, inefficient, and redundant quarterly reports, the Commission should move to an annual reporting model consisting of a certification of compliance form (or, where necessary, a more detailed explanation of a licensee’s non-compliance).

Finally, Hearst believes that regularly scheduled, full-length children’s E/I programming should remain the touchstone for compliance under the Category A renewal standard. Because most television stations air most of their programming according to a regularly scheduled, predictable programming grid, and because most viewers (including children and their parents)

rely upon that longstanding paradigm to identify programming of interest, it is erroneous to suggest that the use of regularly-scheduled, full-length children's E/I programming is anachronistic.

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## **I. Introduction**

Hearst has been operating broadcast television stations in local markets across the country since the 1940s. The company appreciates and takes seriously its public interest and public service obligations to serve all of its viewing constituencies, including children. Hearst has long recognized the importance and value of high-quality, accessible educational and informational programming for children and the significance of the programming mandate established by the Children's Television Act. In fact, Hearst stations regularly go above and beyond the Commission's E/I Core Programming guideline. For example, for more than a decade, each Hearst station has routinely scheduled at least seven (rather than the minimum guideline number of six) 30-minute E/I Core Programs—i.e., 3½ hours of Core Programming per week—each quarter on its primary program stream. In addition, local production of age-appropriate informational programming has continued in an era when most stations have ceased such endeavors—e.g., Hearst's WGAL locally produces 36 episodes annually<sup>4</sup> of *Brain Busters*, a 30-minute, closed captioned, high school quiz bowl show that targets teen and tween viewers on weekends in the late morning or early afternoon. And, in early 2016, the company deepened its longstanding commitment to the distribution of high-quality children's E/I programming by acquiring a majority interest in Litton Entertainment, a leading producer of high-quality children's E/I programming.

Hearst joins other commenters in endorsing several of the changes proposed in the *Notice* in order to better align certain of the Commission's E/I programming rules with significant developments in the video programming marketplace since the Commission first adopted the rules

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<sup>4</sup> Consistent with the local school calendar, the program goes on hiatus during the summer months.

in 1991<sup>5</sup> (and last modified them in 2006<sup>6</sup>). As the *Notice* recognizes, and as commenters unanimously agree,<sup>7</sup> “there have been dramatic changes in the way television viewers, including younger viewers, consume video programming”<sup>8</sup> in the last decade. Among other things, Saturday morning broadcasts of *entertainment* cartoons have given way to a new universe of cable and Internet-based sources of children’s entertainment programming<sup>9</sup>; the family’s living room

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<sup>5</sup> See *Policies and Rules Concerning Children’s Television Programming*, Report and Order, 6 FCC Rcd 2111 (1991) (“1991 Order”), *recon. granted in part*, 6 FCC Rcd 5093 (1991).

<sup>6</sup> *Children’s Television Obligations of Digital Television Broadcasters*, Second Order on Reconsideration and Second Report and Order, 21 FCC Rcd 11065 (2006) (“2006 Order”).

<sup>7</sup> See, e.g., Comments of the National Association of Broadcasters, MB Docket Nos. 18-202, 17-105 (Sept. 24, 2018) (“NAB Comments”) at 5-12; Comments of the Network Commenters, MB Docket Nos. 18-202, 17-105 (Sept. 24, 2018) (“Network Comments”) at 1-3; Comments of Nexstar Broadcasting, Inc., MB Docket Nos. 18-202, 17-105 (Sept. 24, 2018) (“Nexstar Comments”) at 2-5; Comments of Gray Television, Inc., MB Docket Nos. 18-202, 17-105 (Sept. 24, 2018) (“Gray Comments”) at 5.

<sup>8</sup> *Notice*, ¶ 1; see also *id.* ¶¶ 16-17.

<sup>9</sup> Both the *Notice* and commenters point to the “explosion” of sources of children’s programming in recent years, citing YouTube Kids, Nickelodeon, Disney Junior, and others. See *Notice*, ¶¶ 16-17. But discussion of developments in the video programming marketplace cannot lose sight of the CTA’s “educational and informational” qualifier, a statutory prerequisite. See 47 U.S.C. § 303b(a)(2) (directing the Commission to consider “the extent to which the licensee . . . has served the educational and informational needs of children through the licensee’s overall programming . . .”). Purely entertainment programming, even if specifically directed to children, does not satisfy the statutory mandate. Cf. Comments of Center for Digital Democracy, Campaign for a Commercial-Free Childhood, and the Benton Foundation, MB Docket Nos. 18-202, 17-105 (Sept. 24, 2018) (“Center for Digital Democracy Comments”) at 26-29 (observing that “the vast majority of children’s programming” shown on cable, websites, or streaming services “is primarily entertainment”); Comments of Litton Entertainment, MB Docket Nos. 18-202, 17-105 (Sept. 24, 2018) (“Litton Comments”) at 12-13. Just as the Commission in 1996 identified several questionable programs (including *Bugs and Friends* and *Yogi Bear* as educational and informational, today’s *Family Guy* and *The Simpsons* also would not satisfy the CTA even though children under 17 comprise a sizeable amount of the audiences for these animated programs. Perhaps there is an explosion of sources for children’s programming, but a significant portion would not reflect the “educational and informational” cognitive goals. Put differently, an explosion of entertainment programming content does not mean that the CTA’s requirements and the Commission’s rules are no longer needed to ensure the availability of high-quality educational and information programming. Broadcasters fill that need: PBS provides educational and informational programming directed to elementary-school aged children, and commercial broadcasters tend to air E/I programming directed to the teen and so-called “tween” segments of



television set has been enhanced by the routine, simultaneous use (at least in households that can afford them) of second screens, including smartphones and tablets; and a variety of free and subscription-based websites offer didactic educational and informational content for young children and teens. Of course, as valuable a trove of content as the Internet may be, the unmonitored use by minors of the (unregulated) web to access educational content also exposes children to a variety of risks that lie a mere click or two away from the intended content, including age-inappropriate content, excessive advertising, and targeting and tracking that compromise privacy.<sup>10</sup>

While none of these developments should be an impetus for broadcasters to reduce their commitment to serving the specific and specialized needs of children viewers, Hearst—like other commenters—believes that it is time for the Commission to explore how to provide broadcasters with greater flexibility to air programming best suited to the needs and interests of their local

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the viewing audience. The “market failure” of the 1970s and 1980s that gave rise to Congress’s passage of the CTA in 1990 has been eliminated, which means the CTA has been a bi-partisan success story. *See* CHILDREN’S TELEVISION ACT OF 1989, SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION, S. REP. NO. 101-207, at 9 (1989) (“[D]espite the FCC’s contention that market forces should be sufficient to ensure that commercial stations provide educational and informational children’s programming, the facts demonstrate otherwise. The same problems with children’s programming that the FCC found in 1976 exist today. Market forces have not worked to increase the educational and informational programming available to children on commercial television.”).

<sup>10</sup> *See, e.g.*, Comments of Center for Digital Democracy, Campaign for a Commercial-Free Childhood, and the Benton Foundation, § III, pp. 23-33; Comments of Common Sense Kids Action, § III.b, pp. 9-10. These risks are not new; in 2009 the full Commission identified several significant risks associated with the use of electronic media (including the Internet) by children. *See Empowering Parents and Protecting Children in an Evolving Media Landscape*, Notice of Inquiry, 24 FCC Rcd 13171 (2009), ¶ 28 (identifying nine categories of risk, including compromised privacy, exposure to exploitative advertising and other inappropriate content, fraud and scams, and harassment and bullying). Given the increase in content on the Internet in the intervening decade—as well as the sophistication of those who prey on children—those risks likely have grown.

communities while protecting children viewers. Several of the revisions to the children’s E/I programming rules proposed in the *Notice* do just that.

In addition, Hearst posits that certain of the rule changes proposed in the *Notice* may be unnecessary because the language of the existing rules already provides the Commission with the tools to invoke a more modern approach to children’s E/I programming rules that would reflect marketplace developments. Indeed, some of the proposals that seek to modernize the children’s E/I programming rules could, instead, unintentionally weaken the central purpose of the E/I programming rules—and the CTA itself—to ensure that high-quality children’s E/I programming remains available and accessible in local television markets across the country. Those proposals—namely, the elimination of certain key elements of the Commission’s “Core Programming” definition—threaten to trivialize the important public service that television broadcasters provide to their audiences under the age of 17.

Another unintended consequence of the proposed revisions to the E/I programming rules relates to accessibility. Hearst is concerned that some of the more extensive rule changes discussed in the *Notice* and supported by commenters may unintentionally result in a decrease of the availability of accessible—i.e., video described and closed captioned—E/I programming to the population who needs it most: hearing-impaired and visually-impaired children.

Furthermore, while the *Notice* and the majority of opening comments focus on the regulatory definition of “Core Programming” (and the proposed updates and modifications to that definition), Hearst believes it would be more helpful to refocus on enhancing the flexibility of the current rules and children’s E/I programming regime. Consistent with Hearst’s position, the Commission’s asserted goals in this proceeding are to ensure that the children’s E/I programming rules serve the dual ends of “improv[ing] broadcasters’ ability to serve the educational and

informational needs of today’s young viewers” by giving them “more flexibility in fulfilling their obligations under the CTA”<sup>11</sup> and “ensur[ing] that the objectives of the CTA continue to be fulfilled.”<sup>12</sup> To that end, wholesale revision of each distinct element of the definition of “Core Programming” is unnecessary<sup>13</sup> when, instead, reinforcement of the Category A / Category B compliance regime—including (i) a grant to broadcasters of greater control over Core Programming preemptions/reschedulings<sup>14</sup> and (ii) guidance on the contours of the inherently-flexible “Category B” path to satisfying the E/I programming rules<sup>15</sup>—would more efficiently serve the same policy objectives.

## **II. Targeted Enhanced Flexibility Would Strengthen the Existing E/I Rules and Address Calls for Open-Ended Flexibility in This Proceeding**

### **A. The Proposed Multicast-Only Option Doesn’t Account for the Disparity in Signal Availability Between OTA and MVPD Viewers**

The *Notice* queries whether the current application of the Core Programming guideline to each multicast channel (in addition to the primary program stream) continues to be warranted.<sup>16</sup> In addition, the *Notice* proposes—and several commenters endorse—a regulatory regime whereby stations would be permitted to relegate all of their children’s E/I programming to a multicast channel.<sup>17</sup> While Hearst agrees that each multicast stream should not be subject to an independent CTA processing guideline, Hearst disagrees that it would be in the public interest to allow licensees

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<sup>11</sup> *Notice*, ¶¶ 1, 18.

<sup>12</sup> *Notice*, ¶ 18.

<sup>13</sup> *See* Section IV *infra*.

<sup>14</sup> *See* Section II.C *infra*.

<sup>15</sup> *See* Section II.B *infra*.

<sup>16</sup> *Notice*, ¶ 51.

<sup>17</sup> *Notice*, ¶¶ 49-50.

to exclusively use multicast channels (or a combination of multicast channels and non-broadcast platforms) to satisfy the public interest standard required by the CTA.

Hearst believes that each station should be required to meet the core E/I processing guideline on its primary programming stream, but not also on each full-time multicast stream. Requiring each multicast stream independently to satisfy the E/I processing guideline imposes significant burdens on broadcasters, and it is without basis in the CTA, which directs the Commission to consider a “licensee’s overall programming,” not the programming on each stream a broadcaster may air.<sup>18</sup>

Hearst does not agree, though, that licensees should be allowed to move all of their children’s E/I programming to multicast streams. Although a station’s multicast stream(s) have the same over-the-air (“OTA”) coverage area as the station’s primary signal, multicast streams do not, in fact, reach the same number of viewers as primary streams. The reason for the disparity in viewer reach is twofold. First, it is important to understand that in most markets, a station’s OTA signal—including its primary and multicast programming streams alike—does not reach all households within the market. The size and shape of many markets makes it impossible from a regulatory perspective for a station to cover OTA the entirety of the population within the market. And second, MVPD distribution frequently expands a station’s coverage. Must-carry stations are entitled to carriage on all MVPDs within their defined market area, while stations that elect retransmission consent routinely secure distribution by MVPDs throughout the entirety of the market and even out-of-market in significantly viewed areas. A station’s OTA signal, by itself, reaches fewer households than the station’s OTA signal and MVPD-distributed signal combined.

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<sup>18</sup> *See Notice*, ¶ 52 (observing that the CTA “does not dictate that [E/I] programming be assessed on a stream-by-stream basis”); *see also* NAB Comments at 27-31.

MVPD distribution does not, however, uniformly provide access to stations' multicast streams. In fact, stations often cannot secure MVPD distribution of any or all of their multicast streams.

It follows that, because of their greater geographic penetration (via OTA coverage coupled with MVPD distribution), primary program streams are the most widely available and most-watched program streams for virtually all stations that multicast. To illustrate the point, consider Hearst's station WAPT, which operates in the 95th largest market (Jackson, Mississippi). The station's OTA signal covers the center of the market but is not predicted to reach Adams, Pike, and Walthall Counties and is predicted to reach only a portion of Attala, Franklin, Jefferson, Holmes, and Humphreys Counties. And, certain geographical features in the Jackson market obstruct WAPT's OTA signal delivery to certain locations within the predicted coverage area.<sup>19</sup> Thus, viewers in those locations that are not predicted to receive WAPT's OTA signal will have access to WAPT's children's E/I programming only to the extent that such programming is carried by MVPDs.

Given that stations—including those owned and operated by Hearst—are not able to routinely secure carriage of multicast program streams by all MVPDs,<sup>20</sup> there can be no real question that a station's primary programming stream is the vehicle by which the most children viewers in each market have access to age-appropriate E/I programming—via the station's OTA signal coupled with MVPD carriage. To ensure that access is not diminished, the requirement that

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<sup>19</sup> See [https://transition.fcc.gov/dtv/markets/maps\\_report1/Jackson\\_MS.pdf](https://transition.fcc.gov/dtv/markets/maps_report1/Jackson_MS.pdf).

<sup>20</sup> Only a small percentage of Hearst's multicast channels are carried by both DBS providers, and some of Hearst's multicast channels are carried by no DBS providers.

licensees air children's E/I programming on their primary programming streams should be retained.<sup>21</sup>

**B. The Commission's Category A/B Regime Already Envisions Flexibility Under the CTA, Although Providing Additional Flexibility Under Category A Would Further the Goals of the Commission's Children's E/I Programming Rules**

For decades, broadcasters have been obligated to serve the needs of all viewers in their local communities, including children in the viewing audience.<sup>22</sup> In fact, the Commission has long made clear that broadcasters "have a 'special obligation' to serve children."<sup>23</sup> For years, though, no rules defined precisely how they were expected to fulfill that obligation. When Congress passed the CTA in 1990, local stations for the first time were given distinct guidance, including clear and understandable commercialization limits.<sup>24</sup> The CTA left it to the Commission, however, to determine requirements for, among other things, the quantity of children's E/I programming broadcast licensees must air. During the first five years of the CTA's existence, the FCC used a

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<sup>21</sup> If more reason were needed, primary program streams are already formatted for regularly-scheduled programming, which makes Core Programming a natural fit for primary program stream schedules and a Category A compliance strategy.

<sup>22</sup> See *Children's Television Obligations of Digital Television Broadcasters*, Report and Order, 19 FCC Rcd 22943 (2004) ("2004 Order") (citing, *inter alia*, Report and Statement of Policy re: Commission En Banc Programming Inquiry, 44 FCC 2303 (1960), and *Children's Television Report and Policy Statement*, 50 FCC 2d 1 (1974), *aff'd*, *Action for Children's Television v. FCC*, 564 F.2d 458 (D.C. Cir. 1977)). Hearst generally supports the concept of limited commercial time in programming directed to children under the age of 13 and recognizes that a discussion of that issue is beyond the scope of this proceeding. See *Notice*, App. B, n.5.

<sup>23</sup> See 2004 Order, 19 FCC Rcd at 22945, ¶ 5 (discussing *Children's Television Report and Policy Statement*, 50 FCC 2d 1 (1974)); see also *id.* ("For more than 30 years, the Commission has recognized that, as part of their obligation as trustees of the public's airwaves, broadcasters must provide programming that serves the particular needs of children.").

<sup>24</sup> See 47 U.S.C. § 303a(b) (requiring commercial television stations to "limit the duration of advertising in children's television programming to not more than 10.5 minutes per hour on weekends and not more than 12 minutes per hour on weekdays").

light regulatory touch,<sup>25</sup> which resulted in “some broadcasters . . . providing educational and informational programming as Congress intended”<sup>26</sup> and “some stations . . . airing very little educational programming for children.”<sup>27</sup> The light regulatory touch also resulted in stations identifying entertainment shows like *Biker Mice from Mars* and *X-Men* as educational and informational for children.<sup>28</sup>

Even in 1996, however, the Commission ultimately declined to establish a strictly quantitative guideline. Instead, it implemented a two-pronged approach by which licensees could satisfy their programming obligations—the so-called “Category A” and “Category B” options.<sup>29</sup> The Category A processing guideline allows a broadcaster to meet its CTA obligations by airing programming that meets the regulatory definition of “Core Programming.”<sup>30</sup> Among other definitional criteria, child-directed E/I programming is “Core” if it airs between the hours of 7:00 a.m. and 10:00 p.m.; is a regularly scheduled weekly program; and is at least 30 minutes in length. To qualify for Category A compliance, licensees must air an average of three hours per week (averaged over a six-month period) per full-time channel of programming that satisfies the regulatory definition.<sup>31</sup> The Media Bureau is authorized to approve the children’s TV portion of a license renewal application of a broadcaster that fulfills these Category A requirements.<sup>32</sup>

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<sup>25</sup> 1991 Order, ¶¶ 21 – 24.

<sup>26</sup> *Policies and Rules Concerning Children’s Television Programming*, Report and Order, 11 FCC Rcd 10660 (1996) (“1996 Order”), ¶ 44.

<sup>27</sup> 1996 Order, ¶ 42.

<sup>28</sup> 1996 Order, ¶ 41 & n.100.

<sup>29</sup> See 1996 Order, ¶ 120.

<sup>30</sup> See 47 C.F.R. § 73.671(c), (e).

<sup>31</sup> See 47 C.F.R. § 73.671(c).

<sup>32</sup> See 47 C.F.R. § 73.671(e); see also 1996 Order, ¶¶ 120, 130-32; *Notice*, ¶ 8.

### 1. Enhanced Flexibility Is Warranted for Category A

As the record in this proceeding clearly shows, Category A is routinely relied upon by stations, which makes it undoubtedly a valuable regulatory option for broadcast licensees. It is clear, definitive, measurable, and predictable. The Category A rule allows Stations to know with a fair degree of certainty whether they will meet the three-hour guideline in any calendar quarter, how to schedule programming to maximize the likelihood of remaining compliant in future quarters, and whether they are likely encounter obstacles related to children’s programming at license renewal time. Unsurprisingly, then, broadcast licensees almost uniformly satisfy their children’s E/I programming obligations by demonstrating compliance with the “Category A” rules. Given the popularity of the Category A compliance option, it should be equally unsurprising that some additional flexibility for this category is warranted in order to account for the development and evolution of certain aspects of the video programming marketplace.

*First*, Hearst agrees that the “Core Programming” window should be expanded to encompass programming aired between 6:00 a.m. and 11:00 p.m.<sup>33</sup> As data demonstrate,<sup>34</sup> children watch television programming in significant numbers outside the current “Core Programming” window. The Commission’s “Core Programming” definition should be revised to provide broadcasters greater flexibility to air Core Programming at times when children might be in the audience. Viewers 16 and under will only benefit. Local broadcasters will benefit as well, as an expanded “Core Programming” window affords stations precisely the sort of flexibility the *Notice* touts to air other programming of local interest—weekend local news is one example—without compromising their ability to reach children in their audience.

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<sup>33</sup> See *Notice*, ¶¶ 22-23.

<sup>34</sup> See, e.g., NAB Comments at 18-19.



*Second*, in the interest of affording stations a suitable measure of flexibility, Hearst believes it would be appropriate to revise the Category A Core Programming guideline to deem in compliance each station that airs (i) at least an average of three hours per week (on the one hand) *or* (ii) 35 hours of Core Programming each quarter *and* 182 hours annually (on the other hand) on its primary channel. Such a 3/35/182 hour Core Programming guideline would largely—but with significantly more flexibility—maintain the Commission’s existing commitment to the letter and spirit of the CTA while recognizing that more flexibility is necessary for local stations to appropriately balance their public interest service to children with their public interest service to the entire community. Indeed, the considerable quarterly flexibility (including the recoupment by each multicasting station of 156 hours *per calendar year* on each multicast channel) represented by option (ii) above would be reasonably counterbalanced by the addition of 26 hours *per year* of Core Programming—a fair exchange by any reasonable measure.<sup>35</sup> By providing that incremental measure of flexibility, the scheduling gymnastics that currently plague local stations during predictable periods of heavy live coverage of popular sports events (including but not limited to the Olympic Games) would be alleviated in an appropriate way. Moreover, the predictability of a definitive (albeit flexible) regime—which most federal licensees appreciate and investment markets crave—would further the goal of regulatory certainty.

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<sup>35</sup> A station with multiple multicast channels would recoup even more programming hours (156 hours per year per multicast programming stream) and still only be expected to contribute an additional 26 hours per year of children’s E/I programming on its primary channels—and only if it opted for the (ii) option under Category A. Of course, a station that opts for the (i) option under Category A would simply air at least 3 hours of Core Programming per week, subject to the proposed elimination of the second home policy discussed in Section II.C *infra*.

2. Category B Needs More Clarity as the Commission Itself May Have Caused Unnecessary Confusion About the Scope of the Category B Option

Category A is only one of two options for Media Bureau approval of a station's CTA performance at license renewal available under the Commission's rules.<sup>36</sup> Under Category B, a licensee will also be deemed to have satisfied its E/I programming obligations if it shows

that it has aired a package of different types of educational and informational programming that, while containing somewhat less than three hours per week of Core Programming, demonstrates a level of commitment to educating and informing children that is at least equivalent to airing three hours per week of Core Programming. In this regard, *specials, PSAs, short-form programs, and regularly scheduled non-weekly programs* with a significant purpose of educating and informing children can count toward the three hour per week processing guideline.<sup>37</sup>

From a broadcaster's perspective, the Category B compliance option already affords stations flexibility to schedule a variety of programming to serve the E/I programming needs of their children viewers—precisely the sort of flexibility touted by numerous commenters and cited in the *Notice*. In light of Category B's clear language, it is unclear how children viewers would be better served by an overhaul of the rule when, instead, the Commission could merely provide guidance about the Media Bureau's interpretation of Category B.

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<sup>36</sup> If a renewal application does not meet either Category A or Category B, it is referred by the Media Bureau to the full Commission. In such a situation, the broadcaster has an opportunity to demonstrate fulfillment of its children's E/I programming obligations by relying in part on sponsorship of Core Programming on other stations in the market and/or on "special nonbroadcast efforts" that enhance the value of children's educational programming. See 7 U.S.C. § 303b(b). This alternative for demonstrating compliance is used by licensees even less frequently than the Category B processing guideline; among other things, the prospect of full Commission review is not something a rational licensee would embrace, particularly when the standard against which the licensee's application will be measured is less than definitive. See *Notice*, ¶ 9.

<sup>37</sup> 47 C.F.R. § 73.671(e)(1) (emphasis added); see also *Notice*, ¶ 8.

As written, the Category B rule already affords broadcasters some flexibility, and no change to that portion of the rule is necessary at this time. Pursuant to Category B, a licensee can air children's E/I programming in a format and quantity of its choosing, so long as the station's programming is approximately equivalent (in terms of amount, quality, and content made available to viewers) to the Category A programming option.<sup>38</sup> The license renewal application of a broadcaster that makes a Category B showing can be processed by the Media Bureau in the same fashion as Category A applications.

The Category A/B approach is, at least theoretically, a beneficial rule for broadcast licensees. It provides a clear signpost (Category A) that licensees can be confident will support their license renewals as well as an alternative path to license renewal (Category B) for broadcasters whose children's programming does not squarely meet the definitive Category A guidelines. As the intervening years have proven, though, the Category B option has been of little practical utility to broadcasters; it provides (theoretical) flexibility but—critically—not certainty. For that reason, it has been little used by broadcasters, who are unwilling to “roll the dice” on their license renewals.<sup>39</sup> The *Notice* acknowledges as much.<sup>40</sup> The fact that broadcasters, for over two decades, have almost uniformly avoided the Category B option suggests that it has been ineffective in providing the “measure of flexibility” that the Commission intended to provide to licensees in meeting their children's E/I programming obligations. The instant proceeding provides the

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<sup>38</sup> See 1996 Order, 11 FCC Rcd at 10718, 10723-24, ¶¶ 120, 133.

<sup>39</sup> *Notice*, ¶ 8.

<sup>40</sup> *Notice*, ¶ 8 (“Licensees have rarely attempted to demonstrate compliance under Category B due to uncertainty as to how much Core Programming must be provided.”); see also *id.* ¶ 41 & n.133.

Commission with an opportunity to instruct broadcasters about the already flexible nature of Category B.

Indeed, the Commission’s guidance now is especially important in light of an Order and Consent Decree adopted and released by the full Commission in 2016 that called the viability of Category B into serious question.<sup>41</sup> In the proceeding that led to the *WRFB Order*, the licensee disclosed a shortfall in E/I Core Programming in its license renewal application: It regularly aired four hours of children’s E/I programming per week but, for a period of approximately two years (within an eight-year renewal period), half of that E/I programming aired from 6 a.m.-7 a.m. on Saturdays and Sundays, immediately adjacent to the other half of the station’s children’s weekly E/I programming but outside the Commission’s “Core Programming” window.<sup>42</sup> The Commission ultimately adopted a consent decree that required the station, among other things, to make a “settlement payment”—i.e., pay a fine—of \$14,500, admit that it had violated the children’s E/I programming rules, agree to implement a compliance plan to address the E/I programming requirements, and consent to a short-term—two-year—renewal period.<sup>43</sup>

The *WRFB Order* is instructive to broadcasters, but not in a way that offers concrete guidance or furthers the flexibility incorporated into the Category A/B precept. Instead, it (perhaps accidentally) teaches that airing four hours per week of children’s E/I programming—two hours of which meet the definition of Core Programming and the other two of which would meet that definition but for the fact that they aired in a time slot immediately adjacent to Core Programming hours—might be found insufficient to satisfy the E/I programming requirements, even under

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<sup>41</sup> *R&F Broadcasting, Inc., Licensee of Station WRFB(TV), Carolina, Puerto Rico*, Order and Consent Decree, 31 FCC Rcd 7445 (2016) (“*WRFB Order*”).

<sup>42</sup> See File No. BRC DT-20121001AGN, Exh. 24.

<sup>43</sup> See *WRFB Order*, Consent Decree ¶¶ 14, 16, 18, 19.

“flexible” Category B. That lesson is confusing at best, if not downright fatal to the viability of the Category B option from a licensee’s perspective.

What are broadcasters to make of the *WRFB Order*? The lesson it teaches is that a licensee who attempts to demonstrate compliance with its CTA obligations via Category B does so at its peril. After all, if WRFB’s programming lineup was insufficient to satisfy Category B, it is difficult to imagine any programming strategy that a broadcaster can feel confident would meet Category B. It comes as little surprise, then, that broadcasters rarely invoke the Category B option for satisfying the E/I programming requirement and are, in this proceeding, seeking a more definitive pronouncement about children’s E/I programming. But this is no reason to discard the Category A/B portion of the rule when this proceeding could, instead, be used to breathe more life into both categories.

To that end, this proceeding affords the Commission an opportunity to give direction to the Media Bureau and to licensees on how to use Category B as a viable alternative to—or, as WRFB attempted to do, in concert with—Category A compliance.<sup>44</sup> Clarification of the contours of the Category B processing guideline would go far toward providing broadcasters with precisely the sort of “flexibility” the Commission seeks to achieve by the other rule revisions proposed in the *Notice*. Among other things, Category B compliance expressly acknowledges a broadcaster’s

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<sup>44</sup> The *Notice* suggests, for instance, that “Media Bureau staff might approve the children’s programming portion of a renewal application based upon a showing that, while a station fell two hours short of meeting its Core Processing Guideline during a six month period (i.e., an average of 2.92 hours of Core Programming over the six-month period), it aired one hour of interstitial programming and an hour-long special.” *Notice*, ¶ 40. Although that hypothetical is, standing alone, of little utility to any licensee whose E/I programming did not fit that fact pattern precisely, the Commission can and should provide appropriate guidance about the amounts of “Core Programming”—“somewhat less than” the three hours required by the Category A guideline—that it would require for consideration under Category B as well as guidance about the categories of other programming (or programming-related) efforts or expenditures that the Media Bureau would take into account under Category B.

efforts to provide quality children’s E/I programming in the form of specials, PSAs, short-form programs, and regularly scheduled non-weekly programs—exactly the sort of programming that the *Notice* seeks to allow and encourage by (unnecessarily) revising the regulatory definition of Core Programming.<sup>45</sup> The laudable goals of the *Notice* can and should be served not by unnecessarily rewriting the entire definition of “Core Programming” but by providing guidance to licensees about the existing—and inherently flexible—Category B option for license renewal.

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If both Category A and Category B paths remain available to broadcasters, wholesale revision of the Commission’s children’s E/I programming rules is unnecessary. The combination of Category A and Category B would do precisely what the *Notice* seeks and multiple commenters advocate: It would reinforce the importance of Core Programming as a predictable and meaningful tool for CTA performance and afford broadcasters greater flexibility to serve the programming needs and interests of viewers in their local markets, including children, without undermining the availability and accessibility of children’s E/I programming.

**C. Elimination of the Second Home Policy Will Address Many Concerns Raised in This Proceeding Without Affecting the Availability of E/I Programming to Children Viewers**

Hearst strongly favors giving stations appropriate preemption/rescheduling flexibility by eliminating the “second home policy.”<sup>46</sup> That “policy” is, in fact, not a rule that has ever been the subject of a formal rulemaking proceeding; instead, as the *Notice* acknowledges, it has its roots in a series of late 1990s Media Bureau letters responding to requests by broadcast networks for

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<sup>45</sup> See *Notice*, ¶¶ 19, 20, 24.

<sup>46</sup> To the same effect, see NAB Comments at 24-277; Network Comments at 9; Nexstar Comments at 9-10; Litton Comments at 26-27.

flexibility in rescheduling children's programming to accommodate live sports programming.<sup>47</sup> The Media Bureau's second home "policy" is, itself, contrary to the *Notice*'s expressed intent to provide broadcasters with appropriate flexibility to air local programming of interest and value to all viewers in their local markets, including children.

In place of the rigid "second home" policy, Hearst urges the Commission to adopt a rule allowing local stations to reschedule preempted children's E/I programming at any time between 6:00 a.m. and 11:00 p.m. (or midnight) within seven days of (i.e., seven days prior to and seven days after) the program's originally-scheduled air date, coupled with a requirement that stations take reasonable steps to provide notice to viewers, including (for example) a notice on the station's website, of the rescheduled date and time when the program will air.<sup>48</sup> Allowing broadcasters an appropriate measure of flexibility to reschedule preempted programs is good regulatory policy that accounts for the desire of stations to serve the public interest with localized programming such as parade and other local event coverage, live sports programming, and non-breaking news and public affairs specials.

Of course, Hearst agrees that broadcasters should be required to provide viewers with adequate notice of rescheduled children's E/I programs, but the Commission's rigid notice

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<sup>47</sup> *Notice*, ¶ 14 & n.70 (citing *Mr. Alan N. Braverman, Senior Vice President & General Counsel, ABC, Inc.*, Letter Order, 12 FCC Rcd 9919, 9922-23 (MB 1997); *Mr. Rick Cotton, National Broadcasting Co., Inc.*, Letter Order, DA 97-1470, 1997 WL 878297, at 4 (MB July 11, 1997); and *Mr. Martin D. Franks, Senior Vice President, Washington CBS, Inc.*, Letter Order, DA 97-1479, 1997 WL 878296, at 3 (MB July 11, 1997)). As such, it has long been questionable whether the Commission could impose a forfeiture penalty on a station for performing inconsistently with the second home policy, but the *in terrorem* effect of the policy has caused unnecessary rigidity in the programming practices of stations for nearly two decades.

<sup>48</sup> Additional flexibility for the rescheduling of preempted Core Programming episodes is also necessary during certain predictable but periodic stretches of time such as Olympics coverage, which typically lasts for multiple consecutive weekends and displaces significant periods of regularly scheduled programming of all types.

requirement too should be relaxed.<sup>49</sup> In place of the current requirement that stations provide on-air notice of rescheduled programming,<sup>50</sup> licensees should be allowed to select an appropriate avenue reasonably calculated to inform families of rescheduled children’s E/I programming, including online methods such as station websites. As other commenters have observed, stations commonly make program schedules available on their websites<sup>51</sup>; notice published on station websites would be a sensible and efficient method of informing viewers of changes in those schedules.<sup>52</sup>

### **III. Video Description and Closed Captioning Are Important Hallmarks of Modern Children’s E/I Programming That Serve a Critical Purpose**

As noted above, Hearst believes an important component of children’s E/I programming is (unintentionally) being overlooked: accessibility. Only one commenter addressed this issue in the

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<sup>49</sup> See, e.g., Network Comments at 9.

<sup>50</sup> Today, the “second home” policy requires stations to provide on-air notice of a change in the schedule for airing E/I programming; a station that does not provide the required notice will not be able to count the rescheduled program toward compliance with the processing guideline. See Notice, ¶ 57 & n. 174.

<sup>51</sup> See Meredith Corporation, Notice of Ex Parte Communications, Docket Nos. GN 16-142, MB 17-105, MB 18-202 (Sept. 21, 2018) at 2 (observing that “electronic programming guides available on station websites or through consumer devices allow for discoverability of children’s programming”).

<sup>52</sup> The Commission elsewhere has recognized the Internet as “the medium used most by the public to obtain information instantaneously.” *Amendment of Section 73.1216 of the Commission’s Rules Related to Broadcast Licensee-Conducted Contests*, Report and Order, MB Docket No. 14-22, FCC 15-118 at ¶ 8 (rel. Sept. 17, 2015). Unsurprisingly, then, the Commission has allowed stations to provide web-based notice in other contexts—among them, EEO recruitment and station-conducted contest rules. See *Amendment of Section 73.1216 of the Commission’s Rules Related to Broadcast Licensee-Conducted Contests*, Report and Order, 30 FCC Rcd 10468, (2015) (amending 47 C.F.R. § 73.1216 to permit broadcast stations to disclose material terms of station-conducted contests to viewers and listeners on any publicly-accessible Internet website); *Petition for Rulemaking Seeking to Allow the Sole Use of Internet Sources for FCC EEO Recruitment Requirements*, Declaratory Ruling, 32 FCC Rcd 3685 (2017) (allowing broadcasters to use the Internet as the sole method by which to notify members of the public of certain job vacancies).



opening comments of this proceeding,<sup>53</sup> and Hearst believes it warrants more careful consideration.

Children’s E/I programming aired by numerous stations—likely by all Big Four affiliates—is both video described and closed captioned.<sup>54</sup> The proposed elimination of (i) the 30-minute duration criterion in the definition of Core Programming and (ii) the requirement that stations air children’s E/I programming on their primary channel threatens the availability of age-appropriate programming—and E/I programming in particular—that is accessible to the audience of hearing-impaired and visually-impaired children.

A significant amount of short-form programming and locally-produced non-news programming with no repeat value are exempt from the Commission’s closed captioning rules.<sup>55</sup> In addition, licensees that operate channels that earn less than \$3 million in gross revenues are likewise not required to expend resources to provide closed captioning of programming on such channels (other than the passing-through of closed captioning already provided in program material).<sup>56</sup> (Hearst is not aware of many multicast program streams with gross revenues exceeding \$3 million dollars.) Thus, to the extent that the children’s E/I programming rule is

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<sup>53</sup> See Comments of Litton Entertainment, § II.C.

<sup>54</sup> Hearst does not own or operate any Fox affiliates and cannot state with certainty whether Fox-affiliated stations routinely air video described children’s E/I programming. Pursuant to a plain reading of the Commission’s closed captioning rules, 47 C.F.R. § 79.1, virtually all children’s E/I programming—certainly all English and Spanish language children’s E/I programming—is required to be closed captioned when aired on a station’s primary channel during Core Programming hours.

<sup>55</sup> See 47 C.F.R. § 79.1(d)(6) (exempting from the closed captioning requirements “[i]nterstitial material, promotional announcements, and public service announcements that are 10 minutes or less in duration”; 47 C.F.R. § 79.1(d)(8) (exempting from the closed captioning requirements “[p]rogramming that is locally produced by the video programming distributor, has no repeat value, is of local public interest, is not news programming, and for which the ‘electronic news room’ technique of captioning is unavailable.”).

<sup>56</sup> See 47 C.F.R. § 79.1(d)(12).

modified to encourage more short-form programming and/or the migration of children’s E/I programming from primary channels to multicast channels, the Commission’s accessibility rules would permit such programming to be produced and aired without closed captioning. This result would represent a tangible loss of a significant amount (at least 156 hours per year per station) of age-appropriate broadcast programming for hearing-impaired viewers under the age of 17. Hearst believes that such a result is not intended.

For visually-impaired viewers, accessibility to television programming is fostered by video description.<sup>57</sup> The video description rules allow covered stations (Big Four affiliates in the Top 60 DMAs) to “count” children’s programming towards their quarterly (87½ hours) compliance. Many covered stations air regularly-scheduled 30-minute children’s E/I Core Programming on their primary program streams in partial satisfaction of the video description requirements—but would have little incentive to do so if children’s E/I programming could be moved to multicast program streams that are not affiliated with the Big Four networks. This result would effectively roll back the progress envisioned—and made—by the Twenty-First Century Communications and Video Accessibility Act.<sup>58</sup> Significantly, the effects would be felt by multiple, vulnerable constituencies and not only by visually-impaired children viewers. As the American Foundation for the Blind observes:

Video description provides enhanced detail of a program’s visual content and is inserted during existing pauses in the show’s audio track. This enhancement makes television programming more accessible to a *wide range of viewers including those with learning disabilities, autism, viewers who are visually impaired, or English language learners*. As a result, our

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<sup>57</sup> See 47 C.F.R. § 79.3.

<sup>58</sup> Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751 (2010) (“CVAA”); Amendment of Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-265, 124 Stat. 2795 (2010) (making technical corrections to the CVAA).

special needs community has been able to experience the full value of this remarkable programming.<sup>59</sup>

Hearst cannot endorse regulatory proposals that are likely to disenfranchise multiple viewing constituencies.

#### **IV. Hearst Endorses a Reduction in the Recordkeeping and Reporting Requirements as Proposed in the *Notice***

Hearst agrees with numerous other commenters that the current reporting and recordkeeping requirements should be streamlined as proposed in the *Notice*, because the current requirements are unnecessarily burdensome, redundant, and of limited if any practical utility to parents in the viewing audience.<sup>60</sup> As experience illustrates and several commenters have shown, the quarterly reports mandated by the current rules<sup>61</sup> are inefficient and wasteful, consuming both the Commission's resources and broadcasters' resources that would be better applied to the production and distribution of programming of interest to stations' local communities. The Commission should require an annual report—in the form of a certification of compliance (or, where necessary, a detailed explanation of a licensee's non-compliance), filed within 30 days of the end of the calendar year—rather than the cumbersome and time-consuming quarterly reports required under the current rules.

#### **V. The Definition of “Core Programming” Should Not Be Jettisoned**

A number of changes proposed in the *Notice* are laudable, intended to streamline the reporting process and afford broadcasters appropriate flexibility in meeting the programming

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<sup>59</sup> *Ex parte* Letter from American Foundation for the Blind, Docket No. 18-202 (dated Oct. 9, 2018), unnumbered ¶ 2 (emphasis added).

<sup>60</sup> *Notice*, ¶¶ 29-35. *See also* NAB Comments at 36-42; Network Comments at 6-7; Nexstar Comments at 8-9; Gray Comments at 2-5.

<sup>61</sup> *See* 1996 Order, 11 FCC Rcd at 10693, ¶ 68.

needs of all their viewers, including children 16 and under. But several of the revisions proposed in the *Notice* to the regulatory definition of “Core Programming” would not serve the interests of Hearst’s children viewers or the goals of the CTA and should not be implemented. The existing definition of “Core Programming,” coupled with the requirement that programming meeting Category A or Category B (as applicable) air on a broadcaster’s primary program stream, ensures that children and parents—including those families dependent on over-the-air broadcast stations for access to children’s E/I programming—have ready and reliable access to high-quality children’s educational and informational programming.

**First**, the Commission should not eliminate the requirement that E/I programming be “regularly scheduled.”<sup>62</sup> Touting the value of “flexibility,” some commenters call for eliminating the requirement.<sup>63</sup> But regularly scheduled programming has not been rendered anachronistic by time-shifted and on-demand viewing. Quite the contrary: Even today, the vast majority of broadcast programming—local and national news, sports, talk shows, and prime time entertainment, to name a few—is “regularly scheduled.” It is the paradigm under which broadcasters operate, and it is the paradigm that viewers assume and rely upon to identify programming of interest, to them and to their children.<sup>64</sup>

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<sup>62</sup> *Notice*, ¶ 24.

<sup>63</sup> *See, e.g.*, Gray Comments at 6; Nexstar Comments at 7.

<sup>64</sup> *See, e.g.*, Center for Digital Democracy Comments at 15 (arguing that, even if appointment viewing has declined, the “regularly scheduled” requirement should be retained because “parents still need to be able to find the programs to record them on a DVR”); Comments of Common Sense Kids Action, MB Docket Nos. 18-202, 17-105 (Sept. 24, 2018) at 6-7 (urging the Commission to retain the regularly scheduled and weekly-occurring requirements “[b]ecause data shows that children learn better with regular, repeated content” “than from one-off videos”).

Contrary to the suggestion in the *Notice*<sup>65</sup> and arguments made by a number of commenters, elimination of the “regularly scheduled” requirement is not necessary to open the door to a return of short-form E/I programming—because the Category B processing guideline expressly anticipates the airing of “specials, PSAs, short-form programs, and regularly scheduled non-weekly programs.”<sup>66</sup> Put differently, the requirement that E/I programming be “regularly scheduled” under Category A is not a roadblock to the production and distribution of short-form programs and specials because such non-regularly-scheduled programming is already accounted for and permitted as part of Category B.<sup>67</sup> An order offering guidance as to the Media Bureau’s expectations for Category B processing may provide sufficient incentive for broadcasters “to invest in high-quality educational specials and non-weekly programming”<sup>68</sup> that the *Notice* touts—assuming a viable marketplace for such programming even exists.

**Second**, Hearst urges the Commission to retain the requirement that Core Programming be at least 30 minutes in length.<sup>69</sup> For precisely the same reasons that the “regularly scheduled” requirement does not stand as a roadblock to the airing of short-form programming and specials, the 30-minute-length component of the “Core Programming” definition is not an obstacle to the production and airing of child-targeted, age-appropriate PSAs, interstitials, and other short-form programs, all of which can count toward a broadcaster’s showing under Category B. Moreover,

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<sup>65</sup> *Notice*, ¶ 24 (questioning whether the “regularly scheduled” requirement “may in fact undermine broadcasters’ incentives to air a wider variety of children’s programming”).

<sup>66</sup> 47 C.F.R. § 73.671(e)(1).

<sup>67</sup> See also 1996 Order, 11 FCC Rcd at 10714, ¶ 112 (finding that short segments can count toward the processing guideline under Category B for stations that air “somewhat less” than three hours of Core Programming per week).

<sup>68</sup> *Notice*, ¶ 24.

<sup>69</sup> See *Notice*, ¶ 20 (tentatively concluding that the E/I programming rules should be revised to eliminate the requirement that Core Programming be 30 minutes in length).

there is no relevant, reliable data in the record to suggest that the emotional and cognitive development of children is *better* served by program material that is shorter than 30 minutes in duration, and other commenters have pointed out that there is reason to believe that the 30-minute-length requirement in fact serves the public interest.<sup>70</sup>

*Finally*, as discussed above, Hearst urges the Commission to retain the requirement that “Core Programming” be aired on stations’ primary rather than multicast streams.<sup>71</sup> Proposals to allow broadcasters to shift all children’s E/I programming to their multicast streams<sup>72</sup> pay scant attention to the effects of such a rule on the market for new, high-quality E/I programming. As other commenters have demonstrated,<sup>73</sup> multicast streams suffer from less MVPD carriage<sup>74</sup> and are watched by significantly fewer viewers—and fewer viewers means less sponsorship and/or advertising revenues, which in turn means fewer resources to be devoted to the production of new

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<sup>70</sup> See Comments of the National Hispanic Media Coalition, MB Docket No. 18-202 (Sept. 24, 2018) at 16-17 (asserting that “30-minute programming is more effective than short segment programming because it provides more content, allows for the development of a theme, and permits educational messages to be told in the form of a story”); Comments of Sesame Workshop, MB Docket No. 18-202 (filed Sept. 24, 2018) at 5 (“[W]e do not believe that the most critical modifications of the rules outlined in the [Notice] (such as the proposals to permit Core Programming that is less than 30 minutes or less than three hours a week, or to allow Core Programming to be broadcast on multicast feeds) absent a reconsideration of the original goals of the CTA to advance educational choice for all families—are either timely or strategic.”); Comments of America’s Public Television Stations, the Corporation for Public Broadcasting, and the Public Broadcasting Service, MB Docket No. 18-202 (filed Sept. 24, 2018) at 5-6 (discussing the effectiveness of particular children’s E/I shows, each of which are 30 minutes in length).

<sup>71</sup> Notice, ¶¶ 36-37, 49-50.

<sup>72</sup> See, e.g., NAB Comments at 19-20.

<sup>73</sup> See, e.g., Litton Comments at 13-18.

<sup>74</sup> As the Notice observes, “MVPDs are not required to carry stations’ multicast streams.” Notice, ¶ 55.

E/I programming.<sup>75</sup> And allowing stations to move all children’s E/I programming to multicast streams would almost certainly result in substantial reductions in the quality of that programming—among other things, E/I programming broadcast in standard definition rather than full HD and without the benefit of closed captioning and video description.<sup>76</sup> Such an outcome would threaten to return us to precisely the sort of market failure that existed prior to the adoption of the CTA in 1990, driving quality programming for children 16 years of age and younger from the marketplace.

In short, removing the 30-minute and regularly-scheduled elements of the “Core Programming” definition and inviting local stations to move children’s E/I programming to multicasts would effectively remove a number of the meaningful “guardrails” established by the children’s E/I programming rule. What is likely to result is a slew of PSAs broadcast in SD on stations’ lesser-watched multicast streams. On the other hand, retaining those elements of the Core Programming definition—which is clear, concise, and familiar to broadcasters—will not deprive broadcasters of valuable “flexibility” if the Commission uses this opportunity to clarify the practical scope of the “Category B” processing guideline.

### **Conclusion**

For these reasons, Hearst respectfully requests that the Commission update certain of its children’s educational and informational programming rules to provide broadcasters appropriate flexibility to meet the educational and information needs of children in their viewing audiences, reject calls for elimination of key elements of the “Core Programming” definition, and take this

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<sup>75</sup> Fewer viewers turned in to children’s programming on multicast streams also would mean that stations’ efforts to devote ad inventory during their children’s E/I programming exclusively to PSAs, rather than to paid advertisements, will reach fewer viewers.

<sup>76</sup> *See supra* § III.

opportunity to provide broadcast licensees with guidance about application of the “Category B” processing guideline to ensure that it remains a meaningful option for compliance with the CTA.

Respectfully submitted,

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